

EXELA PHARMA SCIENCES, LLC,

Plaintiff,

v.

**CORNERSTONE THERAPEUTICS INC.,
CORNERSTONE BIOPHARMA, INC., and
EKR THERAPEUTICS, LLC,**

Defendants.

THIS MATTER IS BEFORE THE COURT on “Defendants’ Motion To Stay Initial Attorney’s Conference” (Document No. 32). This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion and the record, the undersigned will grant the motion, with modification.

Plaintiff Exela Pharma Sciences, LLC (“Plaintiff” or “Exela”) filed its “Complaint For Declaratory Judgment” (Document No. 5) on August, 8, 2013, seeking a judgment declaring that Exela has not infringed United States Patent No. 7,659,290 (“the ‘290 patent”) and that the claims of the ‘290 patent are invalid.

On September 4, 2013, Defendants Cornerstone Therapeutics Inc., Cornerstone BioPharma, Inc., and EKR Therapeutics, LLC (collectively “Defendants” or “Cornerstone”), filed their “...Motion to Dismiss or Alternatively To Transfer Venue...” (Document No. 24) seeking to dismiss this action under the first-filed rule, or alternatively, to transfer it to the District of Delaware under 28 U.S.C. § 1404(a) for consolidation with Cornerstone’s first-filed action -- Cornerstone Therapeutics Inc., et al. v. Exela Pharma Sciences, LLC, et al., Case No.

13-1275-GMS (D. Del) (the “Delaware action”). The Delaware action purportedly involves the same parties, the same patent, and the same allegedly infringing product as the instant action before this Court. See (Document Nos. 24, 34).

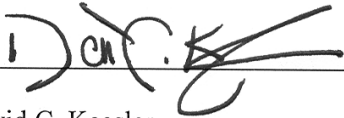
Cornerstone filed the complaint initiating the Delaware action on July 24, 2013, about two (2) weeks before this lawsuit was filed by Exela. (Document No. 34, p.2). Moreover, the undersigned notes that Exela moved to transfer the Delaware action to this Court on or about August 9, 2013, the day after it initiated this lawsuit, and almost a month prior to Cornerstone filing the motion to dismiss or transfer to Delaware now pending before this Court. (Document No. 34, p.3).

“Defendants’ Motion To Stay Initial Attorney’s Conference” (Document No. 32) was filed on September 17, 2013, and has now been fully briefed. See (Document Nos. 33, 37, and 39). In short, the Cornerstone Defendants seek to stay this action until this Court has ruled on their “...Motion to Dismiss or Alternatively To Transfer Venue...” (Document No. 24).

After careful review of the record, the Court is inclined to allow the motion to stay, at least until a ruling in the first-filed Delaware action regarding its earlier filed motion to transfer.

IT IS, THEREFORE, ORDERED that “Defendants’ Motion To Stay Initial Attorney’s Conference” (Document No. 32) is **GRANTED**, with modification. The parties shall file a Status Report, jointly if possible, on or before **December 18, 2013**.

Signed: October 17, 2013



David C. Keesler
United States Magistrate Judge

